

<p style="text-align: right;">82</p> <p>1 thing?</p> <p>2 Q. Post secondary, yes.</p> <p>3 A. No.</p> <p>4 Q. Where did you graduate from high school?</p> <p>5 A. Well, I went to Armstrong. I didn't graduate</p> <p>6 from Armstrong. I got a GED and had it certified through</p> <p>7 Armstrong.</p> <p>8 Q. Who is Sean O'Keefe?</p> <p>9 A. I worked with him at Olive Garden and he worked</p> <p>10 for me at The Melting Pot, and now he's just a friend of</p> <p>11 mine. He currently works at Doolittle's.</p> <p>12 Q. And Anna Lynch is the person you mentioned</p> <p>13 before is your best friend?</p> <p>14 A. Yes.</p> <p>15 Q. And you worked with her three or four times, one</p> <p>16 of them being Kip's?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. What other places have you worked?</p> <p>19 A. The Olive Garden, Melting Pot.</p> <p>20 Q. Kip's?</p> <p>21 A. And Kip's.</p> <p>22 Q. And Beth -- is that an N?</p> <p>23 A. Svedich.</p> <p>24 Q. So it's S-V-E-D-I-C-H?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">84</p> <p>1 A. It's difficult, yes. Yes.</p> <p>2 Q. And what time frame did Mr. Smith not pay your</p> <p>3 child support?</p> <p>4 A. Well, he didn't pay -- he left in November of</p> <p>5 '07, and then we went to court in December of '07 and he</p> <p>6 was ordered -- well, not -- yeah, I guess he was ordered.</p> <p>7 He was to be paying some child support then and didn't.</p> <p>8 And didn't start paying child support until May of '08.</p> <p>9 Q. So from December '07 to May of '08 you weren't</p> <p>10 receiving child support?</p> <p>11 A. No.</p> <p>12 Q. And for a portion of that time you were</p> <p>13 unemployed?</p> <p>14 A. Yes.</p> <p>15 Q. And you were receiving unemployment?</p> <p>16 A. Yes. It started I think the first week of</p> <p>17 February.</p> <p>18 Q. What was Mr. Smith doing as a job?</p> <p>19 A. He was at Resources and Food and Food Team.</p> <p>20 Q. The company that you had used to find a job?</p> <p>21 A. Yeah. That's how I got him the job. I actually</p> <p>22 got him the position there.</p> <p>23 Q. Okay. Do you see under the Acknowledgment in</p> <p>24 the bottom third of this document, it says, "I certify</p> <p>25 that the statements I have made on this application are</p>
<p style="text-align: right;">83</p> <p>1 Q. And how do you know Ms. Svedich?</p> <p>2 A. She's now my sister-in-law, but at the time she</p> <p>3 was a friend of mine who -- she does investments. She</p> <p>4 ended up marrying my brother so kind of introduced her.</p> <p>5 Q. How was she a professional reference for you?</p> <p>6 A. She -- well, she did some investments and was</p> <p>7 talking to me about investments, 401K, the best things to</p> <p>8 do, those type of things. I mean, she works within that</p> <p>9 business and knows really just me, how I've worked. But</p> <p>10 other than that, I mean, more as a friend, I suppose.</p> <p>11 Maybe professional wasn't the best thing to write.</p> <p>12 Q. Okay. Backing up for a little bit, you're</p> <p>13 making \$12 an hour at Mary T.?</p> <p>14 A. That's correct.</p> <p>15 Q. And you have the four kids living with you,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And you receive child support?</p> <p>19 A. Yes.</p> <p>20 Q. Has there ever been a time when Mr. Smith has</p> <p>21 not kept up with child support?</p> <p>22 A. Yes.</p> <p>23 Q. And did that cause some concern to you?</p> <p>24 A. Yes.</p> <p>25 Q. Did it cause you to be upset?</p>	<p style="text-align: right;">85</p> <p>1 true and correct"?</p> <p>2 A. I see that.</p> <p>3 Q. And you signed it underneath that</p> <p>4 Acknowledgment?</p> <p>5 A. Yes.</p> <p>6 Q. And you understand that the dates on the first</p> <p>7 page are no longer correct?</p> <p>8 A. That's correct.</p> <p>9 (Smith Deposition Exhibit 4 marked for</p> <p>10 identification by the Court Reporter.)</p> <p>11 Q. (By Ms. Bischoff) Ms. Smith, could you please</p> <p>12 take a look at Exhibit 4?</p> <p>13 A. All right.</p> <p>14 Q. Do you recognize this document?</p> <p>15 A. Yes.</p> <p>16 Q. And what is it?</p> <p>17 A. It's the letter that they extend to you when</p> <p>18 they offer the position. It's something that I think</p> <p>19 that Hilton must use but this was offered, this was given</p> <p>20 to me when I was offered the position at the Minneapolis</p> <p>21 Hilton.</p> <p>22 Q. And did you accept the position?</p> <p>23 A. Yes.</p> <p>24 Q. Did you understand that your position was the</p> <p>25 SkyWater Restaurant/Lounge p.m. manager?</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">86</p> <p>1 A. Yes.</p> <p>2 Q. And what did that involve?</p> <p>3 A. To oversee the restaurant and the staff, so</p> <p>4 financially, and then also be responsible for our guests</p> <p>5 within the Hilton.</p> <p>6 So, I mean, it's big. It's a really big,</p> <p>7 lengthy job. I have to make sure there's guest</p> <p>8 satisfaction, that our SALT scores are there, meeting the</p> <p>9 fiscal responsibilities, that our staff are trained, that</p> <p>10 I work within our guidelines of the union.</p> <p>11 Q. Was it a stressful job?</p> <p>12 A. Yeah, there were times. It's a big hotel.</p> <p>13 Q. Stressful that caused you depression-like</p> <p>14 symptoms?</p> <p>15 A. Well, certainly not in the beginning.</p> <p>16 Q. When did the stress begin to be so much that it</p> <p>17 caused depression-like symptoms?</p> <p>18 A. Well, we got -- probably -- probably when we had</p> <p>19 this -- what was his name? We brought a chef in. We</p> <p>20 didn't have a chef when we first started, for the</p> <p>21 restaurant. But that wasn't stressful. That was fine.</p> <p>22 But then they brought in this man, and that created a lot</p> <p>23 of stress.</p> <p>24 Q. Do you remember his name?</p> <p>25 A. I'm thinking of it. No, I don't recall. He</p>	<p style="text-align: right;">88</p> <p>1 there was a time -- what was his name? I don't recall.</p> <p>2 I don't recall.</p> <p>3 Q. Can you remember by how many months it was after</p> <p>4 you started?</p> <p>5 A. Eight.</p> <p>6 Q. Was his name John Anderson?</p> <p>7 A. That's it. Yes. Thank you.</p> <p>8 Q. Besides not doing his job well do you have any</p> <p>9 other complaints about Mr. Anderson?</p> <p>10 A. He just wasn't -- he wasn't making sure that our</p> <p>11 food was safe. Temperatures need to be taken, food needs</p> <p>12 to be held at proper temps, food can't be brought in and</p> <p>13 purchased, they need to be labeled and dated at all</p> <p>14 times. It's extremely important because you're serving</p> <p>15 people and it could kill them, and he wasn't doing it. I</p> <p>16 can guarantee that.</p> <p>17 Q. Anything else in the first year of your</p> <p>18 employment that caused you additional stress?</p> <p>19 A. You know, other than the normal day-to-day</p> <p>20 stress, from huge groups, you know, we do huge groups in</p> <p>21 there, from Ekincar (phonetic) to Creative Memories to</p> <p>22 any of those -- those are huge groups that come hard,</p> <p>23 come fast, and there's a lot of them. But that's normal</p> <p>24 stress.</p> <p>25 Q. Okay. And you understood, if you look at the</p>
<p style="text-align: right;">87</p> <p>1 wasn't there very long. He just wasn't very -- in my</p> <p>2 opinion, he wasn't really good at his position and he</p> <p>3 caused a lot of difficulty on the floor with our patrons</p> <p>4 and our staff, which I think is ultimately why he is no</p> <p>5 longer there.</p> <p>6 Q. If you remember his name can you let me know?</p> <p>7 A. Yes.</p> <p>8 Q. And what about his employment caused you</p> <p>9 additional stress?</p> <p>10 A. The fact that we would put in our tickets so</p> <p>11 when people order food you have to ring it in and then it</p> <p>12 prints into the kitchen into the appropriate area, saute</p> <p>13 area, grill area and salad area. But tickets would take</p> <p>14 an hour or steaks would come out well done that are</p> <p>15 supposed to be medium rare, and you bring it back in and</p> <p>16 they do it again wrong and then again wrong. That's</p> <p>17 really stressful.</p> <p>18 And as part of my job responsibility I'm</p> <p>19 fiscally responsible for this establishment, so buying</p> <p>20 table after table food is not the way to go. And trying</p> <p>21 to make sure everyone leaves 100 percent happy was my</p> <p>22 job. I was very good at that.</p> <p>23 Q. Do you know when this chef started?</p> <p>24 A. I'm going to say it was fall. No. It had to</p> <p>25 have been like spring, I think, spring of '07. I know</p>	<p style="text-align: right;">89</p> <p>1 last page of Exhibit 4, that your employment was at-will?</p> <p>2 A. Yes.</p> <p>3 Q. Did you have any questions about the at-will</p> <p>4 status of your employment?</p> <p>5 A. I don't think I totally know what at-will means.</p> <p>6 I know that if an employer hires you at-will and you work</p> <p>7 at-will, so for whatever reasons, really you could be</p> <p>8 terminated if they don't like your hair color, although</p> <p>9 people don't do that. But I believe that's what it comes</p> <p>10 down to. It's a mutual choice on each end.</p> <p>11 Q. How did you like your job at the Hilton?</p> <p>12 A. I liked it. It was strange at first because it</p> <p>13 was one of those jobs that I walked into and I worked I</p> <p>14 think about two or three hours with Jim, and then I was</p> <p>15 given keys. And being a p.m. manager meant that, you</p> <p>16 know, versus during the day when there's a lot of the</p> <p>17 executive committee there and a lot of other people in</p> <p>18 the building, you are alone and you are -- you're on. So</p> <p>19 whatever is going on, it's you.</p> <p>20 The chef, they generally go home earlier and</p> <p>21 that type of thing, so if room service gets busy it's</p> <p>22 you. If they've cut the kitchen and they need help,</p> <p>23 you're cooking. It's, you know, but I enjoy that. I</p> <p>24 kind of thrive off of that. I do. I've been in the</p> <p>25 business quite some time so...</p>

<p style="text-align: right;">90</p> <p>1 Q. Okay. Now, when you started your employment 2 with the Hilton did you have any training? 3 A. We have tons of training within the Hilton, so 4 other than the quick little here's the restaurant part, 5 obviously, the Hilton is a really big company and a big 6 entity, and they take a lot of pride. 7 And I enjoyed a lot of our training, from 8 leadership training to, you know, giving constructive 9 feedback to all the different types of training that the 10 Hilton has, even how to handle your bank and banks get 11 audited, those types of things. There's training on 12 every avenue, webinars. They do an entire eight-hour 13 orientation for you the first day. 14 Q. As a part of your orientation did you learn 15 about Hilton's harassment policy? 16 A. Yes. 17 (Smith Deposition Exhibit 5 marked for 18 identification by the Court Reporter.) 19 Q. (By Ms. Bischoff) I'm handing you Exhibit -- or 20 you're getting Exhibit No. 5. Can you please take a look 21 at it. Look at the second page as well. 22 A. All right. All right. 23 Q. Now, do you see that on the first page of 24 Exhibit 5 you signed acknowledgment of this 25 Harassment-Free Workplace Policy on April 4, 2006?</p>	<p style="text-align: right;">92</p> <p>1 Q. Did you feel comfortable in your knowledge about 2 the Hilton Minneapolis's Harassment-Free Workplace 3 Policy? 4 A. Yes, I did. 5 Q. Did you ever refer to it during your employment? 6 A. Yeah, actually, I did, but more in the union 7 manual, in dealing with a situation with some employees. 8 Q. Okay. Tell me about that situation. 9 A. There was a line cook. Well, all the line 10 cooks, one of them came to me and was extremely upset and 11 said that two of the individuals were harassing him 12 because he was homosexual, and were making gestures with 13 one bent over a counter and just saying inappropriate 14 things. 15 Q. What did you do with it? 16 A. Heather, who was the head of room service, who 17 is actually above me in position, I think it's considered 18 the director. I think so. Anyway, I called her. She 19 had just left. So I had called her and said can you come 20 back because this is -- this is a big deal. 21 And it's night so it's not as if -- if HR was 22 there I would have definitely always gone through HR but 23 I needed guidance and she'd worked for the Hilton for 24 some time. 25 So Heather came back and Heather and I got</p>
<p style="text-align: right;">91</p> <p>1 A. That's correct. 2 Q. And that was your first day of employment? 3 A. Yeah, that must have been it, yup. 4 Q. And on the second page of Exhibit 5 you again 5 acknowledged the Harassment-Free Workplace Policy and 6 agreed to abide by it accordingly, but this time it's on 7 May 31, 2006. Do you see that? 8 A. That is correct. 9 Q. So approximately two months after you started 10 you received another copy of the Harassment-Free 11 Workplace -- 12 A. Yes. 13 Q. Did you receive additional training? 14 A. I don't remember if we did right then. It's 15 something they refresh and do often throughout the 16 building so there's several things that I had signed in 17 the beginning that I would have signed again throughout 18 time. 19 Q. Okay. Do you remember that every year managers 20 received a refresher? 21 A. Absolutely, yes, I do remember that. And I'm 22 not sure if that was it, because it was only -- it was 23 just that small gap and I don't remember if that's when 24 we did it or if it was the following year. I just don't 25 recall.</p>	<p style="text-align: right;">93</p> <p>1 statements and wrote statements and had him write a 2 statement, and then she called somebody from HR. And 3 they guided us on what to do, and that we suspension- 4 pending the individuals until HR had a chance to 5 investigate. 6 Q. What happened? 7 A. They investigated. And as much as I know, which 8 isn't a lot because I don't usually talk about it 9 afterwards, is I know the individuals still work there, 10 that they were disciplined in some way. They were also, 11 I think, went through the harassment policies with them 12 again, and they said they wouldn't do it anymore. 13 Q. Did it happen again? 14 A. Not that I'm aware of, no. 15 Q. Is that an example of how the Hilton policy 16 works? 17 A. Well, yeah. I mean, the Hilton's policy is -- 18 that's what it is. It's just that I had to look at the 19 union book because you have to make sure it's following, 20 and it's past practice is the standard. So whatever has 21 been done in the past, for whatever situation, is what 22 they would follow through and do again with the union. 23 That's as much as I know on that. 24 Q. Do you feel the situation was handled 25 appropriately?</p>

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<p style="text-align: right;">94</p> <p>1 A. I guess so, yeah.</p> <p>2 Q. Okay. Then the second page of Exhibit 5, it has</p> <p>3 Roman numerals. And the first has a Policy and the</p> <p>4 second says Allegations and Penalty.</p> <p>5 A. Yes.</p> <p>6 Q. Do you see there in that first sentence, second</p> <p>7 line, says, "Hilton encourages and expects you to notify</p> <p>8 immediately your supervisor, your department head, or the</p> <p>9 Director of Human Resources.</p> <p>10 A. Yes.</p> <p>11 Q. Now, in this case you went to a department head?</p> <p>12 A. I did. And then we notified --</p> <p>13 Q. -- HR?</p> <p>14 A. HR.</p> <p>15 Q. Okay. So you knew that you needed to</p> <p>16 immediately notify someone?</p> <p>17 A. Yes.</p> <p>18 Q. Tell me what you did as the p.m. restaurant</p> <p>19 lounge supervisor.</p> <p>20 A. Like would you like me to tell you a breakdown</p> <p>21 of -- from come in or...</p> <p>22 Q. Sure.</p> <p>23 A. Start work at 3:00. So come in and you always</p> <p>24 touch base within the office with whoever has been</p> <p>25 working day, touch base with that person, because -- I</p>	<p style="text-align: right;">96</p> <p>1 I usually at that time too -- we have a -- we</p> <p>2 get -- Heather and I created this daily -- a logbook is</p> <p>3 what it's called, so each area, it's all in one. It's a</p> <p>4 snapshot of everything that goes on in a day from how</p> <p>5 many covers we may have done to sales to any special to</p> <p>6 anything incidental that may have happened that evening,</p> <p>7 the shift, the weather, kind of groups that are in-house.</p> <p>8 So go and get some of that set up. I put some</p> <p>9 of my specials in there, that kind of thing. If I knew I</p> <p>10 was out of something, make sure that's listed on the</p> <p>11 board, those type of deals.</p> <p>12 Usually about that time is when my staff is</p> <p>13 coming in. If I have to set up for any big parties or</p> <p>14 anything like that, I'm doing it.</p> <p>15 We also have happy hour in the bar, which I</p> <p>16 helped to institute. So I go up there and make sure that</p> <p>17 we were stocked, that they were fine, that they weren't</p> <p>18 overbusy. If they were I'd be up there helping them.</p> <p>19 And our guests take precedence over anything</p> <p>20 I've just mentioned so if it means I don't get my bank</p> <p>21 until 5 o'clock, I don't get my bank until 5:00. I'm</p> <p>22 going to make sure our staff is there to help the clients</p> <p>23 because when they're there you've got to help them. So</p> <p>24 if we get busy, that's where you go.</p> <p>25 Q. You said you helped to institute happy hour.</p>
<p style="text-align: right;">95</p> <p>1 call it the handing off of the baton, but it's basically</p> <p>2 that. You've got to know what's going on.</p> <p>3 Check reservations. Go get my bank out of the</p> <p>4 lock boxes. And then usually I get my drawer ready for</p> <p>5 out front, because there's -- the host stand has a money</p> <p>6 drawer and it's my bank, the Hilton's money but I'm</p> <p>7 responsible for the money there, and that's what we use</p> <p>8 to make change for guests and such. So I put that out.</p> <p>9 I would lay out my floor plan for the night, I</p> <p>10 would write my folks in their sections up on a board in</p> <p>11 the back.</p> <p>12 Q. Hold on. Your folks?</p> <p>13 A. I'm sorry. The staff.</p> <p>14 Q. Okay. And who comprises staff?</p> <p>15 A. The servers, the wait staff, and also the wait</p> <p>16 assistants. So I put the wait staff into their sections</p> <p>17 and I assign wait assistants to them. So all of that's</p> <p>18 written out on the board in the back so they know you're</p> <p>19 in section 1 and so-and-so is working for you tonight.</p> <p>20 I get any information I need to from whichever</p> <p>21 chef, assistant chef, whoever is working, sous chef. I</p> <p>22 get the information on the specials of the evening.</p> <p>23 Usually decide on a wine to pair with that, type it up,</p> <p>24 and get the special boards ready because we have special</p> <p>25 menus, so I go type those up.</p>	<p style="text-align: right;">97</p> <p>1 What does that mean?</p> <p>2 A. It was one of my ideas. I had to really sell</p> <p>3 Victor on this. Victor was the F&amp;B director.</p> <p>4 Q. F&amp;B means food and beverage?</p> <p>5 A. Food and beverage, yes. He's director of the</p> <p>6 food and beverage. And he and I met about it several</p> <p>7 times. And we said there's no one doing happy hour at</p> <p>8 this end of town. If we can come up with a way to do the</p> <p>9 free food and not reduce the drinks, because you make all</p> <p>10 the money off drinks, and it's true, we make a lot of</p> <p>11 money off of alcohol, maybe we could draw in on some of</p> <p>12 the business that's around us.</p> <p>13 Target, for instance, is always going to The</p> <p>14 Local or The News Room. Maybe we could draw them down</p> <p>15 the road.</p> <p>16 So we as a team of people then started working</p> <p>17 and we instituted happy hour. I believe it still happens</p> <p>18 today.</p> <p>19 Q. Were you ever on a probationary period during</p> <p>20 your employment with Hilton?</p> <p>21 A. Yes, I was placed on one.</p> <p>22 Q. When?</p> <p>23 A. September of '07. I mean, when you hire too</p> <p>24 you're probationary so, to be honest with you, I'll</p> <p>25 answer that way as well. I do believe it's 90 days or</p>

<p style="text-align: right;">98</p> <p>1 such probationary in the beginning.</p> <p>2 Q. Do you ever get performance reviews?</p> <p>3 A. Yes.</p> <p>4 Q. And when did you get them?</p> <p>5 A. Right after I first started I think we did one</p> <p>6 on 90 or 60. I know we did one immediately there after I</p> <p>7 started, and then they do one yearly. So I know that</p> <p>8 I -- I think I received three total, but for sure two.</p> <p>9 (Smith Deposition Exhibit 6 marked for</p> <p>10 identification by the Court Reporter.)</p> <p>11 Q. (By Ms. Bischoff) Ms. Smith, can you please</p> <p>12 take a look at Exhibit 6?</p> <p>13 A. All right. All right.</p> <p>14 Q. Do you recognize this document?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. It's a performance review given to me.</p> <p>18 Q. Does the date of November 3, 2006 sound accurate</p> <p>19 to you?</p> <p>20 A. Yes.</p> <p>21 Q. Who reviewed your performance?</p> <p>22 A. Jim Vennewitz.</p> <p>23 Q. And what was Mr. Vennewitz's position?</p> <p>24 A. He's the assistant food and beverage director</p> <p>25 for the Hilton.</p>	<p style="text-align: right;">100</p> <p>1 Salamone?</p> <p>2 A. Correct.</p> <p>3 Q. So ZeZe is also reporting up that same line?</p> <p>4 A. Yes. Absolutely. I know that for sure.</p> <p>5 Q. Okay. And who were the other team managers in</p> <p>6 the food and beverage department?</p> <p>7 A. Not in SkyWater because that's SkyWater, then</p> <p>8 there would be Heather Huggins in room service. There</p> <p>9 was another manager over there, though. Oh. Sunny. I</p> <p>10 don't remember her last name either. Sunny maybe. Sunny</p> <p>11 was an assistant manager in room dining, dining room</p> <p>12 service.</p> <p>13 And then in the beverage department when I first</p> <p>14 started, Kim Thompson is the director, beverage director,</p> <p>15 so she basically oversees the bar down in SkyWater as</p> <p>16 well as all the banquets. And then under her at that</p> <p>17 time was Nakeela. And then after that I think it was --</p> <p>18 Mo was there. Mo Hassan. And then I don't remember if</p> <p>19 there was anybody else.</p> <p>20 But then David Bullerman. And David had always</p> <p>21 kind of -- well, David Bullerman worked with us in</p> <p>22 SkyWater too as a supervisor before he went over to the</p> <p>23 beverage.</p> <p>24 Q. Nakeela Wright, is that it?</p> <p>25 A. Yeah, I believe that's her last name.</p>
<p style="text-align: right;">99</p> <p>1 Q. He reports in to Victor?</p> <p>2 A. Yes.</p> <p>3 Q. Victor Salamone, I should say?</p> <p>4 A. Yes.</p> <p>5 Q. Does anyone else report in to Mr. Vennewitz?</p> <p>6 A. Well, ZeZe. ZeZe was the a.m. manager for</p> <p>7 SkyWater.</p> <p>8 Q. What is ZeZe's last name?</p> <p>9 A. It's like Zenab (phonetic) or something. I</p> <p>10 know, I'm sorry. And I don't even think ZeZe is her real</p> <p>11 name. No. It's like arf -- it starts with an A, her</p> <p>12 last name, and her first name is like Zenab. I'm really</p> <p>13 bad with names like that.</p> <p>14 Q. ZeZe was the a.m. manager?</p> <p>15 A. Correct.</p> <p>16 Q. And you were the p.m. manager?</p> <p>17 A. Correct. So the both of us did for absolute</p> <p>18 sure -- now, I'm not sure how it really breaks down</p> <p>19 politically with the rest of everyone, because Jim works</p> <p>20 with everybody so meaning Heather in room service and the</p> <p>21 beverage department, but who's reporting to who, I'm not</p> <p>22 positive.</p> <p>23 Q. Okay. But you're reporting to Jim Vennewitz?</p> <p>24 A. Yes.</p> <p>25 Q. And Jim Vennewitz is reporting in to Victor</p>	<p style="text-align: right;">101</p> <p>1 Q. And what were her and Mo Hassan's positions, do</p> <p>2 you remember?</p> <p>3 A. To assist Kim, which would ultimately then mean</p> <p>4 then to run the bar in SkyWater as well as any of the</p> <p>5 banquet functions. So they have ultimate responsibility</p> <p>6 of the money, the financial, you know, setting up the</p> <p>7 bars, the staff that were working, scheduling, that type</p> <p>8 of thing.</p> <p>9 Q. But you only handled the restaurant?</p> <p>10 A. Well, in the beginning I really only ran the</p> <p>11 restaurant like solely and then would help in the bar</p> <p>12 once in a while. I didn't spend a ton of time up in the</p> <p>13 lounge.</p> <p>14 But then after like the first year that I was --</p> <p>15 well, maybe like a year prior to it, I started getting</p> <p>16 more and more involved in the lounge, meaning I spent</p> <p>17 more time in that area. And near the end I spent a lot</p> <p>18 of time in that area.</p> <p>19 Q. Did you like it?</p> <p>20 A. At times.</p> <p>21 Q. What do you mean at times?</p> <p>22 A. When it's crazy busy it's really crazy busy. It</p> <p>23 just is. When 1,000 people come over that skyway at the</p> <p>24 convention center and they want to have a drink in the</p> <p>25 bar like it is in your basement, because I swear it's no</p>

<p style="text-align: right;">102</p> <p>1 bigger than this, it's kind of crazy. And people aren't 2 happy when they have to wait so long. 3 One thing about the Hilton is we're good about 4 finding out where we screwed up and doing better along 5 the road. So we have repetitive groups, and we would do 6 better with them the next time out, setting up more bars, 7 having more staff. 8 Q. If you could have chosen, would you have picked 9 supervising the lounge? 10 A. Yes and no. Let me answer it that way. Yes, 11 because I enjoy the staff, I enjoy the fast pace. I'm 12 gifted and good at what I do, but no because I ultimately 13 didn't have a real say of anyone in there. I wasn't 14 scheduling them, I didn't have a say over their 15 schedules. I often thought that the schedules were 16 incorrect and we weren't staffed properly. 17 Q. Who did the staffing? 18 A. Either David or Kim or, you know, I'm not sure 19 if it was her assistant beverage managers or her herself. 20 I know she had final sign off so it would be one of her 21 assistants but I'm not sure. 22 Q. Did you get along with Kim? 23 A. In the beginning, yes, I certainly did. 24 Q. When did things change? 25 A. I don't know. I always felt uncomfortable and</p>	<p style="text-align: right;">104</p> <p>1 Q. Who told you? 2 A. One of the cocktail people, I believe. 3 Q. Who? 4 A. I think it was Robin. 5 Q. What did Robin tell you? 6 A. That Kim and Harley had a relationship that went 7 way deeper than work. 8 Q. And you took that to mean sexual relationship? 9 A. Yes. Then she said that there was hanky-panky 10 that went on, which then that to me, I assumed that's 11 what that meant, so I made the assumption. 12 Q. Did you hear it from anyone else? 13 A. Not that I can recall, no. 14 Q. So you hear this rumor from Robin and you turn 15 around and talk to Tom Henry about it? 16 A. Not right away but, yes, eventually I did say 17 it. At first I just sat there going wow and not doing 18 anything and wasn't, you know. And then after some time 19 I told ZeZe, I had said to ZeZe in our office, and then 20 some time later I told Tom. 21 Q. Why did you -- or who was Tom Henry? 22 A. Well, Tom, he was like a line cook to begin with 23 and then he was promoted into a supervisor or assistant 24 sous chef position. So he was like a -- he was a 25 manager. I mean, he did manager functions but with the</p>
<p style="text-align: right;">103</p> <p>1 uneasy around Kim, and I'm not sure why. 2 Q. Did you ever talk with other people about Kim? 3 A. Yes, I did. 4 Q. About what? 5 A. I talked with ZeZe and Tom Henry about rumors I 6 had heard about Kim and Harley. I also made a really bad 7 statement in front of Kim about Kim and David. 8 Q. What was the bad statement? 9 A. I said it seemed like Kim and David were joined 10 together at the hip, and that apparently Jim and Victor, 11 they were their favorites. 12 Q. So that Kim and Dave were Jim and Victor's 13 favorites? 14 A. Kim and Dave were Jim and Victor's favorites, 15 yes. 16 Q. Why was that a bad statement to make in front of 17 staff? 18 A. You should never talk about co-managers in the 19 building. It's wrong. It's wrong. It also created 20 animosity between Kim and I. 21 Q. What was the rumor that you had heard about Kim 22 and Harley? 23 A. That they had been together in a sexual way. 24 Q. Did you believe it? 25 A. I didn't really know.</p>	<p style="text-align: right;">105</p> <p>1 kitchen staff. 2 Q. Was he your equal or subordinate? 3 A. He would be my equal. 4 Q. And what was Tom's reaction to you telling him 5 about this rumor? 6 A. Well, it's like when you tell anybody something 7 like that, they go, what, you know, that type of thing. 8 I can't believe that. Really. Because it's gossip. And 9 I think all of us people react in the same manner to 10 gossip, which is ridiculous, but... 11 Q. Did ZeZe have the same reaction? 12 A. She said no way. Pretty much, yeah. 13 Q. Did you talk to anyone else about it? 14 A. Not that I -- no, no, not that I recall. 15 Q. Did you talk to April Bezdichek about it? 16 A. I may have. I may have. 17 Q. Kristin Lessard? 18 A. I could have. I don't recall but I could have. 19 Q. Anyone else you could have spoken about it with? 20 A. I don't think so. I mean, it was something I 21 drug around like it was -- I don't think so. 22 Q. Did you have more than one conversation with 23 ZeZe or Tom about this rumor? 24 A. I don't recall having more than one but... 25 Q. Did you ever go out for drinks with staff?</p>

<p style="text-align: right;">106</p> <p>1 A. I had been out for drinks with staff before.</p> <p>2 Q. Who?</p> <p>3 A. I went out with David before and -- let's see.</p> <p>4 And Robin and Kristin, April. I went out one time --</p> <p>5 gosh, it was like all the bar staff. David was there.</p> <p>6 No. David wasn't there. He was still at the hotel.</p> <p>7 April was there. Kristin Erdmann from HR was there.</p> <p>8 Kristin Lessard was there. April was there. I know</p> <p>9 there was some banquet bartenders but I don't really know</p> <p>10 them. I know at that -- who else was there? There was</p> <p>11 some other -- yeah, there was a bunch of bartender men</p> <p>12 there, but I don't know all their names. One of them is</p> <p>13 Arlo. Everyone calls him Arlo.</p> <p>14 Q. Anyone else? Okay. So Robin Kelly is a</p> <p>15 cocktail waitress, right?</p> <p>16 A. Robin?</p> <p>17 Q. Yeah, I'm sorry. Robin.</p> <p>18 A. Yes.</p> <p>19 Q. How many times did you go out for drinks with</p> <p>20 cocktail waitresses?</p> <p>21 A. Maybe three or four times or so.</p> <p>22 Q. Okay.</p> <p>23 A. And the last one with all those people wasn't</p> <p>24 actually going out with them. I went somewhere with a</p> <p>25 friend of mine and they were all there and said sit down,</p>	<p style="text-align: right;">108</p> <p>1 Q. How did you determine when last call was?</p> <p>2 A. It's dictated by business levels, so --</p> <p>3 Q. What does that mean?</p> <p>4 A. Okay. I'm sorry. Say there's five people in</p> <p>5 the bar and there's been five people in the bar for well</p> <p>6 over an hour, the kitchen is closed, there's only five</p> <p>7 people in the bar, no one else is coming in, or something</p> <p>8 like that. I mean, even with five we'd probably stay</p> <p>9 open as long as they were drinking.</p> <p>10 But if they were done and they closed all their</p> <p>11 tabs and nobody's got open tabs and we were sitting there</p> <p>12 open, we would probably make the call to close at 1:00,</p> <p>13 so meaning at 12:30 we're going to start to do last call.</p> <p>14 If someone came in we'd say hey, we just did last call</p> <p>15 but we can get you a drink if that's okay, and that's</p> <p>16 what we would do.</p> <p>17 Q. When you say "we" who would make that decision?</p> <p>18 A. Well, I make the ultimate decision as a manager,</p> <p>19 but that's something that, you know, I'm discussing with</p> <p>20 our staff, okay, because I need to know. I need to know</p> <p>21 how many tabs we have open, I need to be able to look</p> <p>22 into that system, I need to, you know, I'm communicating</p> <p>23 with the staff on what it is that I'm thinking and what</p> <p>24 we're doing.</p> <p>25 Q. Okay. And how many times do you make the</p>
<p style="text-align: right;">107</p> <p>1 so...</p> <p>2 Q. Okay. What were your hours as a p.m.?</p> <p>3 A. Well, I came in at 3:00 and closed the</p> <p>4 restaurant, and I would stay until business levels --</p> <p>5 there was a time when we stayed until business levels,</p> <p>6 meaning once we do last call -- well, in the beginning,</p> <p>7 like I said, I wasn't doing the lounge at the same level</p> <p>8 I was near the end so in the beginning I would probably</p> <p>9 be done -- depends on the day, midnight, 12:30, maybe</p> <p>10 1:00 kind of thing.</p> <p>11 Q. Okay. And --</p> <p>12 A. But there are days you're there until 2:30 so...</p> <p>13 Q. When you started taking more and more</p> <p>14 responsibility in the lounge what would your hours</p> <p>15 become?</p> <p>16 A. More of the 1:00, 1:30 kind of genre.</p> <p>17 Q. And when you said business levels, what does</p> <p>18 that mean?</p> <p>19 A. It means once -- what Victor had instituted for</p> <p>20 us, and this happened over time, it was kind of a</p> <p>21 creation, was once last call was done, then I would be</p> <p>22 free to go as a manager because what was left to do was</p> <p>23 the bartender brings down the thing, they do their own</p> <p>24 drops, the staff just clean up the lounge. Last call is</p> <p>25 done so...</p>	<p style="text-align: right;">109</p> <p>1 decision to make last call before 1 o'clock?</p> <p>2 A. A handful. I mean, I don't know. Probably 100</p> <p>3 because it's done by business levels. You don't close</p> <p>4 the bar with 20 people in it, you know.</p> <p>5 Q. Um-hum.</p> <p>6 A. You just don't.</p> <p>7 Q. So you were experienced enough to know when to</p> <p>8 close the bar?</p> <p>9 A. Absolutely.</p> <p>10 Q. Okay. And did you ever have to consult with</p> <p>11 other people when to close the bar?</p> <p>12 A. Yes, almost always, because you want to make an</p> <p>13 educated decision because upstairs in that building you</p> <p>14 have an entire banquet floor. So you have to make sure</p> <p>15 you're mindful of the fact of when do bars stop up there,</p> <p>16 what might they do, are they staying in our building, are</p> <p>17 they going to potentially come down and kill us in this</p> <p>18 bar, do we need -- should we stay open, do we close? We</p> <p>19 don't close to avoid them. We need to know.</p> <p>20 Or are their bars going to late enough level,</p> <p>21 they've drank enough. So almost always I would confer</p> <p>22 with -- almost always I would say, unless there was no</p> <p>23 events, I'm talking to the beverage staff, meaning David</p> <p>24 or Kim or Nakeela or whoever was in that position.</p> <p>25 Q. Who was on that night?</p>

28 (Pages 106 to 109)

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<p style="text-align: right;">110</p> <p>1 A. Correct.</p> <p>2 Q. And do you know -- I mean, when you walk in and</p> <p>3 you're passing the baton, do you know what banquets are</p> <p>4 going on upstairs?</p> <p>5 A. Sometimes. Not always. But before the night</p> <p>6 gets really rocking, yes, I'm touching base with people</p> <p>7 and talking.</p> <p>8 Q. When you touch base with them and talk, do you</p> <p>9 find out when the bars upstairs close?</p> <p>10 A. Sometimes right then or, you know, because hosts</p> <p>11 will extend bars as well so even though you may have that</p> <p>12 little tidbit of information, that doesn't always mean it</p> <p>13 ends up that way near midnight.</p> <p>14 So that's why -- we have Nextel phones that we</p> <p>15 use and ZeZe would have it during the day and I would get</p> <p>16 handed that. It's a really great way to contact them.</p> <p>17 Trying to run around on floors and find people in a giant</p> <p>18 space like that, it's silly, so I would touch base then</p> <p>19 through Nextel.</p> <p>20 Q. Were there ever times when you made the decision</p> <p>21 to close the bar by yourself without conferring?</p> <p>22 A. When there was banquets, you mean?</p> <p>23 Q. Yeah.</p> <p>24 A. Yeah, but that's only because I knew that there</p> <p>25 wasn't bars, you know what I mean? And I knew for sure</p>	<p style="text-align: right;">112</p> <p>1 problems, but at times problems can consume her?</p> <p>2 A. Yes.</p> <p>3 Q. Is that a fair assessment of your performance at</p> <p>4 that time in November of 2006?</p> <p>5 A. Yes. But problems being business levels, but</p> <p>6 yes.</p> <p>7 Q. What do you mean "problems being business</p> <p>8 levels"?</p> <p>9 A. It's -- well, it's a lot -- you need a pair of</p> <p>10 skates sometimes in there. Your restaurant can be busy</p> <p>11 and everybody needs a swipe over here and the lounge is</p> <p>12 getting busy and the cooks are having trouble, or they</p> <p>13 cut and they didn't have enough. That used to happen a</p> <p>14 lot. Or people in interim dining would have an angry</p> <p>15 guest, so I'm one person trying to go into all these</p> <p>16 areas and crisis manage everything.</p> <p>17 Q. Okay. So when you would go out with staff,</p> <p>18 including Robin, Kristin and April, where would you go?</p> <p>19 A. Usually just The Local. It's just around the</p> <p>20 corner.</p> <p>21 Q. And does The Local stay open later than</p> <p>22 SkyWater?</p> <p>23 A. They're open until 2:00. The restaurant itself</p> <p>24 isn't open until 2:00. The restaurant closes earlier</p> <p>25 than that.</p>
<p style="text-align: right;">111</p> <p>1 -- and I'd see the big funnel of people coming down the</p> <p>2 escalators and heading out the door so it's easy to make</p> <p>3 that call, okay, this banquet is going to let out,</p> <p>4 because it's always how I would decide when to cut as</p> <p>5 well. No, you guys are not getting cut until this</p> <p>6 banquet lets out. And then they let out and you see them</p> <p>7 come down, are they coming in or are they going outside.</p> <p>8 You don't know what people are going to do. They don't</p> <p>9 give you an agenda. So that's kind of how I would make</p> <p>10 that decision.</p> <p>11 Q. Now, looking at Exhibit 6 would you say this was</p> <p>12 a fair review?</p> <p>13 A. Absolutely.</p> <p>14 Q. It says you're doing -- you have some good</p> <p>15 solutions, problems, but sometimes the problems can</p> <p>16 consume her, on page 3 of the review, Bates stamped 0034.</p> <p>17 A. Um-hum.</p> <p>18 Q. Do you see that?</p> <p>19 A. Which one is this now?</p> <p>20 Q. Looking at Problem Solving you're given a 2,</p> <p>21 which is below standards, and the comment is, "Debbie has</p> <p>22 good solutions to problems..."</p> <p>23 A. I'm sorry. I must be one back. You don't mean</p> <p>24 actual page 3? Right here, this page 3? Never mind.</p> <p>25 Q. You see that where it says good solutions to</p>	<p style="text-align: right;">113</p> <p>1 Q. What time?</p> <p>2 A. 10 o'clock or 11:00, depends on the day.</p> <p>3 Q. And how long does the lounge stay open?</p> <p>4 A. Until -- we're open until 1:00 but we can stay</p> <p>5 open until 2:00. We don't stay open until 2:00 every</p> <p>6 day. Again that would be dictated by business levels.</p> <p>7 Q. Okay. And so when the SkyWater lounge would</p> <p>8 close at 1 o'clock, you could go out for drinks with the</p> <p>9 staff then?</p> <p>10 A. And it wasn't always necessarily one of those</p> <p>11 oh, let's plan it out and hang out, because I didn't</p> <p>12 consider these people like my girlfriends or something</p> <p>13 along that line. It was just more it's the end of the</p> <p>14 night, and that's usually when something like that would</p> <p>15 come up, or we're going there or I would go on my own to</p> <p>16 go have a beer because running home every day wasn't</p> <p>17 always my favorite thing to do.</p> <p>18 Q. Okay.</p> <p>19 A. So...</p> <p>20 Q. So the bar would close and you would go to The</p> <p>21 Local?</p> <p>22 A. Yes. I did that on occasion, yes.</p> <p>23 Q. On occasion or the three to four times you</p> <p>24 already testified about?</p> <p>25 A. Well, with them, yes. And then I also have</p>



<p style="text-align: right;">114</p> <p>1 friends -- a friend of mine that lives downtown. So if  2 you're asking me overall, did you ever go to The Local,  3 did I go to The Local, yeah.  4 Q. Okay. Did you find it to be a concern that you  5 were socializing with line staff?  6 A. Well, no. Now probably in retrospect it's  7 probably -- I don't know. It wasn't like we were talking  8 about work. It wasn't any of that. It was have a beer  9 and relax and it was maybe a half hour, 20 minute kind of  10 deal and that was it.  11 Q. Well, you had been criticized before at Kip's  12 for fraternizing with staff.  13 A. Correct. But that was from John who was  14 obviously 100 percent not my favorite person. He didn't  15 love me. And none of this was an issue. I had been  16 going out with this staff since I arrived on that  17 property, and when I successfully opened up that  18 restaurant for that man, when I had to hand that over, so  19 it was something that only came up. Why was nothing  20 brought up in April, May, June, July, ever?  21 Q. Well, do you feel as a manager that it can be  22 difficult to discipline staff that you supervise?  23 A. That I know it can be. It is not for me.  24 Q. Well, if you're taking smoke breaks with them  25 and going out for drinks with them, is it still difficult</p>	<p style="text-align: right;">116</p> <p>1 Q. Okay. But so in addition to going to The Local  2 with them on occasion, you also would see them on smoke  3 breaks?  4 A. They've been out one or two times. I actually  5 took more smoke breaks probably with David and Heather  6 than anybody so...  7 Q. And you were told again by John Cosgrove at  8 Kip's that you were taking excessive smoke breaks, right?  9 A. That's what he said. That is untrue.  10 Q. Okay. So the criticisms that Mr. Cosgrove gave  11 you were unfounded and just out to get you?  12 A. That is my belief, yes.  13 Q. They weren't ever valid concerns?  14 A. No.  15 Q. So if there was a concern that you were  16 fraternizing with staff too much at the Hilton, that  17 would be unfounded as well?  18 A. I would say yes. I understand why you should  19 not, and I understand the policy, which is why I said  20 absolutely not. If you guys are there, I'm leaving.  21 Q. Okay. Explain to me the policy that you  22 testified you understand.  23 A. That I understand, I couldn't tell you a written  24 one. I would assume there is one. There must be. That  25 you don't fraternize with people because of the very</p>
<p style="text-align: right;">115</p> <p>1 for you to discipline them?  2 A. No. No, it is not.  3 Q. Do you find you still have the same amount of  4 credibility?  5 A. I've never had a problem with it, no.  6 Q. And you do smoke, right?  7 A. I smoke.  8 Q. So you take smoke breaks every once in a while?  9 A. Yes.  10 Q. And when you took smoke breaks were some staff  11 taking smoke breaks at the same time?  12 A. Yes, there could be people from laundry down  13 there. There's a designated smoking area. I generally  14 would go with the in-room dining managers.  15 Q. Okay. And that would be Heather Huggins or  16 Gretchen Jorgenson?  17 A. Correct.  18 Q. And did you ever have a smoke with Kristin  19 Lessard?  20 A. Yeah. She doesn't smoke. Sometimes she would  21 come out and get some air, yeah. She doesn't smoke.  22 Q. And April Bezdichek?  23 A. Again doesn't smoke, but yes.  24 Q. Robin Kelly?  25 A. No. I never had -- Robin never came outside.</p>	<p style="text-align: right;">117</p> <p>1 things you just mentioned. It can be difficult for  2 probably most people to go ahead then and have to come  3 back and discipline someone or have to write someone up  4 or have a conversation about maybe being inappropriate  5 with a guest or not handling their cash properly. I do  6 not have a problem with that, but I know that that is why  7 something like that would exist.  8 Q. So because you didn't have a problem with the  9 items that support the reason for the policy, you didn't  10 follow the policy?  11 A. I -- no, I wouldn't say that. I would not say  12 that because I did not originally go out there to go hang  13 out with the staff for any reason. David was going and  14 Kim had gone and other people, you know what I mean. And  15 Jim -- other people went out with the staff so it seemed  16 like it was all right to do.  17 Q. Well --  18 A. Based on what my boss and my other co-managers  19 were doing.  20 Q. Come on, Ms. Smith. If your son's friends are  21 out doing something that they shouldn't be doing, it's  22 not okay for your son to be doing it, right?  23 A. Correct.  24 Q. So if other people are violating the policy, why  25 would it be okay for you to violate the policy?</p>

30 (Pages 114 to 117)

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<p style="text-align: right;">118</p> <p>1 A. It isn't. It's not okay.</p> <p>2 Q. Okay. But you understand that the Hilton didn't</p> <p>3 necessarily want you fraternizing with staff?</p> <p>4 A. Yes.</p> <p>5 Q. But you did?</p> <p>6 A. Yes. I just testified to that. Yes. Yes.</p> <p>7 MS. BISCHOFF: Let's do one more exhibit.</p> <p>8 (Smith Deposition Exhibit 7 marked for</p> <p>9 identification by the Court Reporter.)</p> <p>10 Q. (By Ms. Bischoff) Ms. Smith, can you take a</p> <p>11 look at Exhibit 7?</p> <p>12 A. Sure. All right.</p> <p>13 Q. Ms. Smith, have you ever seen this document</p> <p>14 before?</p> <p>15 A. I have seen this.</p> <p>16 Q. And what is it?</p> <p>17 A. It is my performance review the year of '07.</p> <p>18 Q. And Mr. Vennewitz completed this review for you?</p> <p>19 A. That is correct.</p> <p>20 Q. And I'm going to go through some of the</p> <p>21 comments. If you look at the Bates label 0026.</p> <p>22 A. Sure. Yes.</p> <p>23 Q. Okay. Do you see here we're talking about</p> <p>24 loyalty?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">120</p> <p>1 understanding that, I'm telling you, I was still learning</p> <p>2 even to the very end. It's something you've got to be</p> <p>3 very, very careful about everything you do, and it always</p> <p>4 felt like the staff had you under the microscope versus</p> <p>5 your bosses, which was the oddest feeling for me. I</p> <p>6 don't know that I was saying negative things about that,</p> <p>7 but I know I felt that.</p> <p>8 Q. Okay.</p> <p>9 A. And that's what we refer to when we say on my</p> <p>10 sleeve.</p> <p>11 Q. Okay. The next page at 0027 of Exhibit 7,</p> <p>12 there's a comment here in the Policies and Procedures at</p> <p>13 the bottom that says, "Be certain to fill out all</p> <p>14 corrective action properly."</p> <p>15 A. Yes.</p> <p>16 Q. Is that referring to the union issue, making</p> <p>17 sure you want to be careful?</p> <p>18 A. Yes.</p> <p>19 Q. You worked in union facilities before, the</p> <p>20 Canteen?</p> <p>21 A. I did. And it was -- it was such a different</p> <p>22 environment. It just -- I don't know. I have canteen</p> <p>23 union employees who were part of that union and then</p> <p>24 there were school union employees, and that was a lot</p> <p>25 simpler just because it was all based on seniority, and</p>
<p style="text-align: right;">119</p> <p>1 Q. One of your strengths is you putting the guests</p> <p>2 first?</p> <p>3 A. Yes.</p> <p>4 Q. But it also says, "Try to not talk negatively in</p> <p>5 front of staff members."</p> <p>6 A. Yes.</p> <p>7 Q. Do you agree that that was an issue?</p> <p>8 A. Yeah, I do. That's one of my self-esteem issues</p> <p>9 I work on to this day.</p> <p>10 Q. What do you mean?</p> <p>11 A. I am extremely hard on myself and call myself</p> <p>12 stupid and dumb and an idiot and that I screwed up, and</p> <p>13 it's really negative to do when you're supposed to be</p> <p>14 leading a group of people.</p> <p>15 Q. Did you ever say negative things about the</p> <p>16 Hilton in front of staff?</p> <p>17 A. Only -- maybe like the frustration with the</p> <p>18 food, like oh, my God, I think he's an idiot, I might</p> <p>19 have said that about John. I probably did, which is,</p> <p>20 again, inappropriate.</p> <p>21 Q. Anything else about the Hilton?</p> <p>22 A. I really liked the Hilton. The trainings were</p> <p>23 great. You know, it was -- it was difficult at times for</p> <p>24 me to get used to managing union. I never managed union</p> <p>25 servers at all in a property of this enormity. And so</p>	<p style="text-align: right;">121</p> <p>1 their seniority took precedence over Canteen seniority.</p> <p>2 I mean, really, they worked the same schedules.</p> <p>3 It's not the same thing because it's not a restaurant,</p> <p>4 you know. And it's not a hidden variable like that. We</p> <p>5 served the same amount of kids every day, we make food</p> <p>6 that's written on a menu, we follow guidelines, we work</p> <p>7 the same X amount of hours. It was a much -- I don't</p> <p>8 know. It was just a different thing. I never had any</p> <p>9 issues that I had to encounter there.</p> <p>10 Q. Okay. Did you ever have to do any discipline in</p> <p>11 that position?</p> <p>12 A. Only one time. One time for an improper call</p> <p>13 off and that was it.</p> <p>14 Q. And now at the Hilton because staffing, I'm sure</p> <p>15 you had to do corrective actions more often?</p> <p>16 A. Yes, that is correct. A lot of one-on-one</p> <p>17 counselings. There was quite a bit. And it's really</p> <p>18 important to be documenting and in writing everything</p> <p>19 you're doing so I did a lot of coach and counseling, that</p> <p>20 type of thing, and everything needs to be written down.</p> <p>21 Q. Did you often seek out the assistance of</p> <p>22 Hilton's HR staff to handle those?</p> <p>23 A. Yes, to help me, to guide me through it.</p> <p>24 Especially in the beginning because I didn't know. And</p> <p>25 I'm a person who wants to do well. I want to succeed and</p>

<p style="text-align: right;">122</p> <p>1 I want to do it right. I certainly don't want to cause  2 problems and I don't want to upset the employee, but it  3 needs to be handled. You can't continually be late, you  4 know what I mean, or whatever issue it may be. It needs  5 to be handled and addressed, but it needs to be addressed  6 in the appropriate manner, so learning that and finding  7 that out was important to me.</p> <p>8 Q. Who did you consult with in HR?</p> <p>9 A. Well, Kristin or I even had Tracie, who was the  10 director of HR, Kristin Erdmann I would call or Tracie  11 Schultz. I even had her cell number so if something  12 arised, because they're not at night so you're kind of on  13 your own if something comes up and you need to deal with,  14 so I would call Jim. Jim had been in the hotel for a  15 number of years.</p> <p>16 Heather had worked for the Hilton brand because  17 she came from a different Hilton property before she was  18 in the Minneapolis, so she knew. You know, she knows the  19 policy, more about those -- not the policies themselves.  20 I don't know how to word that. But it's the union  21 because the union has a whole book and you need to follow  22 it, dot your I's, cross your T's. It's important.</p> <p>23 Q. Did you feel HR was helpful?</p> <p>24 A. They were.</p> <p>25 Q. And available to you?</p>	<p style="text-align: right;">124</p> <p>1 really started to spend more time focusing on the lounge  2 and the lounge staff. And I kept -- because it was hard  3 because I didn't feel like my staff because I wasn't  4 scheduling them and I wasn't really cutting them, and  5 even when I did cut them I'd have to get clearance from  6 banquets, you know, from the beverage people.</p> <p>7 Q. Well, is there always someone from beverage in  8 the hotel at night?</p> <p>9 A. Pretty much, yeah. As long as -- well, either  10 David or Kim because there's almost always an event going  11 on. And if there wasn't, everybody is working said  12 shifts in a week. We all work at least five shifts per  13 week.</p> <p>14 So even if there wasn't, which generally Sundays  15 are quietest, or holiday times can be very, very quiet in  16 the hotel, they'd still need to work the shift and then  17 they would just be downstairs and David would be okay,  18 I'm going to be upstairs, I'm going to work in the  19 beverage office and reorganize, what have you, just let  20 me know if you need me and I'll come down. They  21 generally were available that way.</p> <p>22 Q. Now, it says, "Don't refer to the bar staff as  23 'they' and be more proactive in leading them." Do you  24 see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">123</p> <p>1 A. As much as they could be. I worked at night,  2 again, so Tracie tried to be, and it was nice.</p> <p>3 Q. Okay. If you look on 0028 of Exhibit 7, I'm  4 looking at Initiative. It says, "Debbie takes plenty of  5 initiative in the restaurant but has shown little to no  6 interest in the lounge."</p> <p>7 A. Yes. That's when the whole thing started  8 shifting.</p> <p>9 Q. "Interest" is spelled wrong but we won't hold  10 that against them. Is that true?</p> <p>11 A. To a certain degree it is. As I referred to  12 earlier, when I started, my main focus was the restaurant  13 and I went to the lounge when I needed to go to the  14 lounge, and I worked up in the lounge and assisted that  15 staff and did that. But I didn't spend a ton of time up  16 in that lounge part.</p> <p>17 Become when I first started the assistant  18 beverage manager would spend more time there, especially  19 during peak periods of time. So I would help and I would  20 run all their food type of thing, because that would be a  21 huge help, actually, but I didn't spend tons and tons of  22 time. I wasn't making cutting decisions of when they  23 would -- none of it. I just wasn't.</p> <p>24 And so around this time, basically -- yeah,  25 right around this time and just shortly before is when I</p>	<p style="text-align: right;">125</p> <p>1 Q. Is that true?</p> <p>2 A. That's what I just was alluding to a moment ago  3 when I said it was hard to consider them to be my staff  4 because I would say a lot of "us" always when I worked  5 with the SkyWater restaurant staff, and it was just --  6 it's something that definitely evolved over time. So I  7 got better in the end, but that's what that means.</p> <p>8 Q. Okay. And then the next page is a page where  9 you put comments?</p> <p>10 A. Yes.</p> <p>11 Q. You say you enjoy working at the Hilton?</p> <p>12 A. Um-hum.</p> <p>13 Q. You're committed to working on your weaknesses?</p> <p>14 A. Yes.</p> <p>15 Q. If you look on 0031, again this is your  16 signature on this page?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. And in No. 4 up here on Next Year's Business  19 Objectives, it says increase manager accountability?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know what that meant or referred to?</p> <p>22 A. Well, every single one of us managers had to  23 have that included in this, actually. So -- and then it  24 goes on to describe what it is by reducing our turnover  25 and that's what it is, is we all as managers need to be</p>

<p style="text-align: right;">126</p> <p>1 accountable.</p> <p>2 Q. Okay.</p> <p>3 A. You don't blame, you don't point. It's all of</p> <p>4 us or none of us.</p> <p>5 MS. BISCHOFF: Let's take lunch. Do an</p> <p>6 hour.</p> <p>7 (Recess taken between 12:05 p.m. and 12:56 p.m.)</p> <p>8 Q. (By Ms. Bischoff) So, Ms. Smith, you remember</p> <p>9 two prescriptions that you take?</p> <p>10 A. Yes. Two medications, yes. One is ProAir and</p> <p>11 the other is Advair.</p> <p>12 Q. Are these for your allergy/asthma symptoms?</p> <p>13 A. That is correct, yes.</p> <p>14 Q. I only remember that from the commercials.</p> <p>15 Okay. So, Ms. Smith, so far we've covered your</p> <p>16 employment at Hilton through your two performance</p> <p>17 reviews, and we've talked a little bit about John</p> <p>18 Anderson causing you some additional stress. Is there</p> <p>19 any other -- any other incident occurred at the Hilton</p> <p>20 pre August 15 that caused you any additional stress? Or</p> <p>21 I should say August 15, 2007.</p> <p>22 A. We've discussed several of the stressful things,</p> <p>23 the job itself, the fact that I wasn't really sure how to</p> <p>24 run the lounge for quite some time, that I didn't feel</p> <p>25 complete ownership of that, that that did create stress</p>	<p style="text-align: right;">128</p> <p>1 A. Well, we have weekly meetings, F&amp;B does. So</p> <p>2 throughout that process, several things had to take place</p> <p>3 on our level in our restaurant or mostly involving the</p> <p>4 lounge itself. From the moment of their reception or</p> <p>5 when they arrived at the hotel from, you know, the foods</p> <p>6 that we created and the special drinks and we had dry ice</p> <p>7 and all kinds of -- it was really cool because everybody</p> <p>8 was dressed up like mad scientists, so I was involved in</p> <p>9 part of all of that.</p> <p>10 I also helped with in-room dining quite a bit.</p> <p>11 She had to come up with amenity packages, which are</p> <p>12 things that are left in guest's rooms. It could be food,</p> <p>13 drink, gifts, what have you, that are set up and left in</p> <p>14 the rooms.</p> <p>15 Q. So for in-room dining were you assisting Heather</p> <p>16 Huggins?</p> <p>17 A. Yes. Some of us -- most of it was done with</p> <p>18 Heather and Victor and sales team, that type of a deal,</p> <p>19 the really big stuff. But some of the -- coming up with</p> <p>20 it and here, let's use a live beta in this glass, and I</p> <p>21 went with her to get some of the fish, yeah, what we were</p> <p>22 going to do, because we did things that we'd never done</p> <p>23 before.</p> <p>24 Q. Did you partake in any of the meetings that</p> <p>25 occurred as part of the director of sales conference?</p>
<p style="text-align: right;">127</p> <p>1 if my life because it is a stressful thing to have</p> <p>2 happen. Really other than that, no.</p> <p>3 Q. Okay. Well, let's talk about August 30.</p> <p>4 A. Okay.</p> <p>5 Q. Will you agree with me August 30 is the date of</p> <p>6 the incident?</p> <p>7 A. Yes, that is exactly right.</p> <p>8 Q. And that was a Thursday?</p> <p>9 A. Yes.</p> <p>10 Q. What events were occurring in the hotel that</p> <p>11 day?</p> <p>12 A. We had the Hilton brand directors of sales for</p> <p>13 the states were having their conference and was held in</p> <p>14 our hotel. This was their final day of their conference</p> <p>15 was on the 30th of August.</p> <p>16 Q. So does this mean that all the directors of</p> <p>17 sales for all Hilton hotels or all Hilton brand hotels</p> <p>18 were descending upon the Minneapolis Hilton?</p> <p>19 A. That's correct.</p> <p>20 Q. So do you remember how many of them there were?</p> <p>21 A. I would -- I'd make up a number if I told you.</p> <p>22 I'm not sure. It was hundreds, I can tell you that.</p> <p>23 Q. And were you involved in the planning of it?</p> <p>24 A. Yes.</p> <p>25 Q. How so?</p>	<p style="text-align: right;">129</p> <p>1 A. Yes.</p> <p>2 Q. As part of the conference itself?</p> <p>3 A. Not the conference itself, no. I'm sorry.</p> <p>4 Q. When were those F&amp;B meetings?</p> <p>5 A. We usually -- we always had a meeting every</p> <p>6 Wednesday. And so 90 percent of all that -- because we</p> <p>7 were planning it well, you know, months -- a couple</p> <p>8 months out, and fine-tuning as it went along, and</p> <p>9 everybody had assignments and everybody knew what they</p> <p>10 needed to do.</p> <p>11 Q. What were your assignments?</p> <p>12 A. Well, I was to run the floor, I was going to</p> <p>13 assist with the delivery of these amenities, because we</p> <p>14 had deliveries on each day that they were there.</p> <p>15 And I did -- so I would be like a leader on like</p> <p>16 four or five floors and we would go with these amenities</p> <p>17 and room keys and go in and set it up and drop it.</p> <p>18 Other than that, just making sure that our</p> <p>19 service and everything was impeccable, because we also</p> <p>20 rolled out the new buffet program for the new Hilton in</p> <p>21 our property so this was the first time a lot of them</p> <p>22 were seeing something that was coming out across the</p> <p>23 nation, something that happens in every property now, but</p> <p>24 it needed to be right and dead on, spot on.</p> <p>25 Q. Okay. So you were assisting with delivering the</p>

<p style="text-align: right;">130</p> <p>1 amenities packages and making sure service in the 2 restaurants and lounge were impeccable? 3 A. Yes. 4 Q. But that, you know, service in the restaurant 5 lounge was part of what you did every day? 6 A. Correct. This is just one of those attention to 7 details where we -- we would do little theme things. 8 They would set it up and make it be kind of '60s with 9 strobe lights and what have you, so each night they did 10 some sort of theme throughout our happy hour, which I 11 oversee the happy hour and those kind of things. It 12 was -- it was my normal job with a kick. 13 Q. Okay. So when did the conference start? 14 A. I think it was a three-day conference so I think 15 they arrived in -- well, some of them came in on Monday 16 and I believe the conference itself began on Tuesday. 17 Even some I think were arriving Sunday but... 18 Q. And what were your hours that way? 19 A. I had regular hours. I started at 3:00. I 20 worked until we closed. And so normally -- I think we 21 were closing the bar, I think the whole time we were 22 there they were closing if they were down and didn't have 23 anything else or if they weren't off property, because 24 they went off the property. Or if they were there we 25 were open until 2:00 or if we knew they were coming back</p>	<p style="text-align: right;">132</p> <p>1 restaurant to watch over the lounge. And I had my phone 2 so they could call me if they needed something. 3 Then I went, set up the restaurant like always, 4 and then I went to start delivering the new amenities. 5 We did it in record time or something because I know we 6 were the first group down. But we did all that. And 7 then I just carried on with the night. But it was very, 8 very, very slow. Very slow. 9 Q. Okay. 10 A. So really we probably had four guests in the 11 restaurant all night, regular patrons to dine. I know 12 that upstairs in the banquet area that they were doing -- 13 this was the end and their farewell so they had ended 14 their conference that day and then there was a giant 15 party that was scheduled for the directors of sales, and 16 that would be up on the banquet floor. 17 Q. So tell me about the giant party for the 18 directors of sales. 19 A. Well, as much as I know about it, I wasn't up 20 there much, but it was really beautiful. I know it was 21 done in levels, it had these white couches, there was 22 kind of like a Prince-like band up there. It was really 23 awesome. That's what we do well. 24 But other than that, I don't really know. I 25 know they must have had a dinner and then the dance, I</p>
<p style="text-align: right;">131</p> <p>1 we would stay open until 2:00. 2 Q. And the August 30 date was the last day of the 3 conference? 4 A. Correct. 5 Q. Let's start from the start of your shift on 6 August 30. Tell me what happened that day. 7 A. Okay. I came in and did my money as usual, but 8 the occupancy in the hotel was down to nothing. I think 9 we were at like eight percent or something. And 10 generally we have Orchestra Hall on a Friday night, which 11 creates quite a bit of business for the lounge and for 12 the restaurant. 13 Q. I thought we said this was a Thursday night. 14 A. I'm sorry. You're right. I'm thinking Friday. 15 Q. Okay. 16 A. I apologize. So I went and I got my money. I 17 set up. I went to check in with in-room dining to see 18 how they were doing because we had been building these 19 little amenities packages, like we had to do bath salts, 20 we had to load hundreds and hundreds of these little 21 boxes, so we were setting up for the next round, and they 22 were doing the waters, and I said when are we going to go 23 with this. 24 So Heather had told me, come back here so that 25 she can go, make sure someone is on the floor in the</p>	<p style="text-align: right;">133</p> <p>1 think, but I was downstairs. 2 Q. Okay. So there are four guests in the 3 restaurant that night? 4 A. (Witness nods head in affirmative.) 5 Q. How many were in the lounge? 6 A. You know, off and on we'd have like maybe ten at 7 the most earlier in the evening. Near the end of the 8 evening we were down to two. 9 Q. Do you remember who, of anyone who was in there? 10 A. Do you mean -- are you referring to guests or 11 staff? 12 Q. Names of guests or people who were sitting in 13 the bar, enjoying the bar, not serving? 14 A. I don't remember their names, no. 15 Q. Do you remember who Brent Foerster is? 16 A. Yes. 17 Q. Was Brent down there? 18 A. I think he was earlier in the evening, yes. 19 Q. Had you been given any direction as to when the 20 bar should close? 21 A. No. 22 Q. I thought you testified that you were going 23 to -- the plan was to keep it open until 3:00 for all -- 24 or open until 2:00 for all three nights of the 25 conference?</p>

<p style="text-align: right;">134</p> <p>1 A. Not for all three nights. It was really 2 dictated on what they did because they went to the 3 Nicolle Island Inn one night and they stayed there until 4 2:00. 5 So it was kind of a we're going to do what we 6 need to do based on what their end times were. If they 7 were at the Twins game are they going to come back early 8 or are they going to go somewhere else. So a lot of it 9 was iffy. We'd keep staff and be ready to go, and if 10 nothing happened, then nothing happened. 11 Q. How late was the giant Prince-like band or party 12 going to go? 13 A. I believe that the band itself was supposed to 14 go to 1 o'clock. I don't know the true end time, I mean, 15 of bars or any of that. 16 I was trying to contact people, managers, David 17 and Kim, Jim to find out that very thing, when's the end 18 time. There's no one down here. I want to cut but we're 19 just sitting here. 20 Q. Were there pizzas delivered that night? 21 A. There were later in the evening, yes. 22 Q. Who ordered the pizzas? 23 A. I got the phone numbers, I -- I'm not positive. 24 I know it was someone of the Hilton staff, but I got all 25 the phone numbers and brochures for -- but that happened</p>	<p style="text-align: right;">136</p> <p>1 they all came down because they all came down at one time 2 at 1:10. 3 Q. Was there any Hilton Minneapolis staff in that 4 group of 35? 5 A. Yes, there was. 6 Q. Who? 7 A. Well, I know Brent was there, Brent Foerster. I 8 think Paul Downing was there but -- I know there was -- I 9 know there was but I don't remember who. It was most of 10 the people from the directors of sales but there was some 11 intermittent folks from our property. 12 Q. So what time did you decide to make the cut? 13 A. I decided at about 12:35, 12:40 that we should 14 probably do last call because there was no one there. 15 And I'd been trying to reach people on the Nextel and I 16 had gone up to the banquet level to try to find someone 17 to ask them how late is the bar going to go, how long are 18 you keeping it open, what do you guys anticipate, are 19 they going to come down. And I couldn't find anybody 20 ever. 21 Q. Were there bartenders out there? 22 A. No. 23 Q. Was the party still going on? 24 A. Yes. I asked two banquet staff that I saw, do 25 you know where anybody is, do you know where David is or</p>
<p style="text-align: right;">135</p> <p>1 at 1:30 in the morning. 2 Q. Okay. But so someone ordered pizzas at 1:30 in 3 the evening or 1:30 a.m., I should say? 4 A. Correct. 5 Q. Where were they seated? 6 A. At that time they were in the lounge. 7 Q. How many of them were there? 8 A. Probably 35. 9 Q. Were they drinking? 10 A. Yup. Yes, they were. 11 Q. What time did this group of 35 people get to the 12 bar? 13 A. 35, I would say ten after 1:00. 14 Q. So if you, hypothetically, if the bar, you had 15 made last call at like 12:45 and 35 people showed up at 16 the bar, would you reopen it if staff was still there? 17 A. Yes. 18 Q. So with 35 people in the bar drinking, the 19 business levels were high enough to keep the bar open? 20 A. Yes, but last call had been done, meaning staff 21 was cut and leaving because they didn't have any tables. 22 So I needed to re-adjust at 1:10, which would be a long 23 time from the time you did last call when you only had 24 two guests and they weren't even drinking. 25 So they left. There was no one in the bar when</p>	<p style="text-align: right;">137</p> <p>1 anything. I don't know where they are. That's what I 2 was told. 3 So I went back downstairs and I said well, it's 4 ridiculous for us to stand here all night if they're 5 going to stay. I don't know. Because they're dancing. 6 They all looked like they were staying to me. So that's 7 the decision I made. So I said okay, let's make last 8 call. 9 Well, then I thought, you know, I'm going to go 10 up there again and I'm going to go see if I can find 11 somebody. So about ten to 1:00 I went upstairs again. 12 And this time I saw a security guard and I said hey, do 13 you happen to know where any of the managers are because 14 I can't find anybody and nobody's picking up their 15 Nextels, because I called Kim and Dave and Jim several 16 times and nobody was picking up. 17 And that was my question, what do you anticipate 18 from these folks, do you think they'll be coming down, 19 because we'll gladly stay open. Because we'd been 20 standing around all night long really. 21 So he pointed at the boardroom and said they're 22 all in there. I said okay, okay. So I walked over and I 23 opened the door. 24 Q. Let's back up. 25 A. Okay.</p>

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<p>1 Q. So at 12:35, 12:40, you do last call. There's 2 no one in there. There's a party going on upstairs? 3 A. Right. 4 Q. But there's no one in the lounge? 5 A. Correct. 6 Q. And the restaurant has been closed? 7 A. For, yeah, quite some time. The restaurant 8 closed at 10:00. 9 Q. So when a person is cut for doing last call, a 10 waitress -- 11 A. Yes. 12 Q. --how long does it take her to tip out, all that 13 stuff? 14 A. Theoretically, 15, 20 minutes. It just depends 15 on if she had any, you know, tables still out there 16 because she'd be responsible for it. Their side work was 17 done. Normally they'd have side work to do so it could 18 take longer if you'd been busy all night and couldn't get 19 to it. But the side work was done. All she had to do 20 was rectify her financials, basically, make her drop. 21 Q. And make her drop, you mean with the bartender, 22 right? 23 A. Yeah, that's exactly how they do it. They run 24 their financial report, they, you know, add up their 25 credit cards and all of that, and then they develop the</p>	<p>1 A. No. 2 Q. Do you remember the two banquet staff you had 3 asked where people were? 4 A. I don't know hardly any of their names. No, I 5 don't recall any names. 6 Q. And you thought it would be ridiculous to stay 7 open since there was no one in the bar? 8 A. If they weren't going to come down, that's what 9 I kept thinking. That's why I went back up because I 10 thought, you know, what if they do come down and now I've 11 cut. And the last thing I want is for me to be serving 12 and that would look bad for us. You know, you don't want 13 a manager serving everybody. You should have enough 14 staff on, right? 15 Q. Okay. 16 A. So I'm like I really just want to talk to these 17 guys is what I'm thinking. 18 Q. And as part of Hilton policy you shouldn't be 19 serving anyone anyway, right? 20 A. Absolutely. 21 Q. So you go back up and run into a security guard. 22 He points to Boardroom 1 and you open the door? 23 A. Correct. 24 Q. What's the first thing you see when you open the 25 door?</p>
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<p>1 envelope and hand it over to the bartender. 2 Q. Okay. 3 A. The bartender at the end of his shift drops all 4 those. 5 Q. And the bartender has to cash her out, right? 6 A. Yes, if she's owed cash, right. But if she's 7 paying in it goes into that envelope. 8 Q. And it would be paying in, she would receive so 9 much cash receipts or why would she be paying in? 10 A. If you had a lot of people who are staying 11 within the hotel, they generally will do room charges, 12 which means you're not functioning on cash, or credit 13 cards as well. So you're doing more of that than you are 14 in-taking cash, then you would be owed money. If you're 15 paying in it's the direct opposite, meaning more people 16 are paying you with cash. 17 Q. Okay. So 12:35, 12:40, do last call. You've 18 been trying to reach people but you make the decision on 19 your own? 20 A. Yes. 21 Q. And then you decide well, I better go check one 22 more time? 23 A. Yes. 24 Q. So you go back up to the room and you run into a 25 security guard. Do you remember what security guard?</p>	<p>1 A. I see David Bullerman and a banquet -- I think 2 she's like a lead staff. I can't think of what they call 3 them, but she wears the tuxedo where the rest of them 4 wear the shirt kind of thing and a vest. So she's a lead 5 banquet staff person, Patti. David's head is tipped back 6 like this and he's standing like this. And Patti is 7 rubbing his thighs and genitals with her hands, and he's 8 going "ooh." That's the very first thing I see. 9 Q. What was he wearing? 10 A. He was wearing his suit. 11 Q. What color? 12 A. Blue. 13 Q. What color tie did he have on? 14 A. I don't know. It was to the side. I don't 15 know. 16 Q. What color shirt did he have on? 17 A. I don't know. 18 Q. What does Patti look like? 19 A. Reddish hair, curly, shoulder length, about 20 five-three. 21 Q. What does David Bullerman look like? 22 A. He has really short, very blond hair. Gosh, I 23 don't know. He looks kind of like a football player 24 though. He's got that look because -- they call him 25 Bully because he's built like a linebacker, almost. You</p>

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<p style="text-align: right;">142</p> <p>1 know, he's got big shoulders. He's a strong-looking  2 young man but he's not very tall.  3 Q. They don't call him Bully because his last name  4 is Bullerman?  5 A. That too.  6 Q. So where is he standing in the room?  7 A. They're standing almost directly in front of the  8 door. Maybe five feet away from the door.  9 Q. What's the next thing you see?  10 A. I see --  11 Q. I'm sorry. His pants are on, right?  12 A. Yes, ma'am.  13 Q. His pants are not unzipped?  14 A. No.  15 Q. Does he have his belt still done?  16 A. I believe so.  17 Q. Shoes are still on?  18 A. Yes.  19 Q. Patti is fully clothed?  20 A. Yes.  21 Q. She's wearing her nylons?  22 A. She wears pants.  23 Q. She's wearing her pants?  24 A. Yes.  25 Q. Her clothes aren't disheveled?</p>	<p style="text-align: right;">144</p> <p>1 Q. And what color hair?  2 A. Blond.  3 Q. Any other distinguishing features?  4 A. No.  5 Q. Do you remember anything else about her?  6 A. I don't know if she was awake or not. I don't  7 know. She was just laying there.  8 Q. You didn't see her move?  9 A. I didn't see her move. I saw him move.  10 Q. What was Dale Nelson wearing?  11 A. Pants and a dress shirt.  12 Q. What color pants?  13 A. They were dark so either black or blue, but I  14 can't be positive.  15 Q. What color shirt?  16 A. It was light, like either green or, you know, a  17 light color like that, or yellow, but I'm not sure.  18 Q. So the woman, the blond, and the skirt color you  19 don't remember, she was lying on her back?  20 A. Yes.  21 Q. And Mr. Nelson was on top of her?  22 A. I didn't say that, but yes. She had her legs  23 spread apart with her knees bent at the end of the table,  24 and he was in between her two knees and was over her, so  25 from her torso area.</p>
<p style="text-align: right;">143</p> <p>1 A. No. I wouldn't say that.  2 Q. Okay.  3 A. Her shirt's hanging out but it's not how you  4 should look if you're out on the floors, but...  5 Q. Was Mr. Bullerman's clothes disheveled?  6 A. His -- you know, his jacket looked crooked.  7 That's what I remember, seeing that, that it looked  8 crooked on his shoulder.  9 Q. What's the next thing you see in the room?  10 A. I see people to my left but most of them had  11 their backs turned and they just had drinks in their  12 hands.  13 And on the right I could see the boardroom  14 table, and lying on the table was a woman with blond hair  15 and on top of her was Dale. And that's when I just asked  16 my question and left.  17 Q. Okay. The woman in blond hair, what was she  18 wearing?  19 A. It looked like a skirt and a top because I could  20 see her legs.  21 Q. What color was the skirt?  22 A. I don't know.  23 Q. What is her national origin?  24 A. I don't know. She's -- whatever, what are we,  25 Caucasian. I'm trying to find that word.</p>	<p style="text-align: right;">145</p> <p>1 Q. So her knees were bent and her knees were bent  2 at the end of the table?  3 A. Yes.  4 Q. And so her -- it's knees and then further up the  5 table?  6 A. Yes. So knees and then your buttocks.  7 Q. So her knees were touching the end of the table?  8 A. It looked like they were hanging like that.  9 Q. So when you say "like that," if I have my  10 knuckles, they're hooked in like that?  11 A. Yes.  12 Q. So the back of the knuckles are touching the  13 edge of the table and the legs were hanging down?  14 A. Yes, almost as if you were sitting on a table  15 except --  16 Q. You lay down?  17 A. You laid down, correct.  18 Q. And her legs were spread apart?  19 A. Yes.  20 Q. And Mr. Nelson is standing in front of her  21 between the two legs?  22 A. Yes. And he's -- I don't know if he's lying on  23 her because his feet are on the ground, and he's bent  24 over her on the table.  25 Q. So was there any part of the front of his body</p>



<p style="text-align: right;">146</p> <p>1 touching the front of her body?</p> <p>2 A. Yes.</p> <p>3 Q. What?</p> <p>4 A. This whole entire -- I'm showing you from his</p> <p>5 chin all the way down to his groinish area, whatever,</p> <p>6 that area, tops of your legs.</p> <p>7 Q. So if I -- with this hand is the woman. The</p> <p>8 back of my knuckles are on the end of the table and she's</p> <p>9 lying down. So he's between her legs and the whole top</p> <p>10 of his body is lying on top of her?</p> <p>11 A. That is correct.</p> <p>12 Q. Did he have his pants undone?</p> <p>13 A. I couldn't see. I don't know. I mean, I don't</p> <p>14 know if they were undone in the front because I couldn't</p> <p>15 see if they were undone in front of him because he was on</p> <p>16 her so whether they were -- I don't know. But he</p> <p>17 didn't -- he wasn't standing there with his butt exposed,</p> <p>18 if that's what you're asking.</p> <p>19 Q. So you didn't see any part of his body?</p> <p>20 A. No.</p> <p>21 Q. Did you see -- you said you saw him move. How</p> <p>22 did he move?</p> <p>23 A. He was -- to me it was a sexual movement where</p> <p>24 you would take your hips and grind upon another person.</p> <p>25 I don't know how else to...</p>	<p style="text-align: right;">148</p> <p>1 Q. And then over here is Mr. Nelson on the right</p> <p>2 side?</p> <p>3 A. Correct.</p> <p>4 Q. Leaning over a woman on a table?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. What else did you see?</p> <p>7 A. I didn't see anything else after that because I</p> <p>8 was horrified. And I just asked my question and I let go</p> <p>9 of the door and then I went really, really fast to the</p> <p>10 escalator and went down and said okay, they're going to</p> <p>11 come down and hit us. And as I'm coming after I got</p> <p>12 there and started saying it that they all started coming</p> <p>13 like within ten minutes.</p> <p>14 Q. What was your question?</p> <p>15 A. Because I'd been trying to find them since</p> <p>16 12:30, it was the question of shall I keep this bar open,</p> <p>17 do you think they're going to come down. And my question</p> <p>18 was this. I said this, I said: "Am I keeping the bar</p> <p>19 open or what?"</p> <p>20 And then I heard Jim's voice from the left, back</p> <p>21 part of that room, but I couldn't see him, say, "Yes, of</p> <p>22 course you are. That's what John Luke wants."</p> <p>23 Q. Okay. So you hear Jim's voice. You don't see</p> <p>24 him?</p> <p>25 A. No.</p>
<p style="text-align: right;">147</p> <p>1 Q. Explain to me the phrase "grind upon."</p> <p>2 A. Like where you take your hips and roll them on</p> <p>3 to the other person in front of you.</p> <p>4 Q. In a dance move?</p> <p>5 A. Well, it looks like sex to me. I mean, that's</p> <p>6 what you do when you're intimate with another person.</p> <p>7 Q. But you didn't actually see them have sex?</p> <p>8 A. No.</p> <p>9 Q. Did you hear the blond or Mr. Nelson say</p> <p>10 anything?</p> <p>11 A. Just moaning.</p> <p>12 Q. How long were you in the room?</p> <p>13 A. About -- about a minute. And I wasn't in the</p> <p>14 room. I stood in the doorway. I opened the door and</p> <p>15 never stood a foot into the room. Just stood there with</p> <p>16 the door open.</p> <p>17 Q. Okay. So let me back up. You see Mr. Bullerman</p> <p>18 and Patti, and she's rubbing his thighs and groin area?</p> <p>19 A. Correct.</p> <p>20 Q. And they're right in front of the door?</p> <p>21 A. Yes.</p> <p>22 Q. To the left -- so to your left there are people</p> <p>23 with their backs to you holding drinks?</p> <p>24 A. Yeah. And some are sitting and some are</p> <p>25 standing, yes.</p>	<p style="text-align: right;">149</p> <p>1 Q. Because he's over in the group with their back</p> <p>2 to you drinking?</p> <p>3 A. Sitting, standing, whatever, yeah.</p> <p>4 Q. Did you see him at all the rest of the evening?</p> <p>5 A. I never saw him again.</p> <p>6 Q. And so you're in the room for a minute. You see</p> <p>7 David Bullerman standing right in front of the door with</p> <p>8 Patti, and on the left you see Dale Nelson and the blond?</p> <p>9 A. Yes.</p> <p>10 Q. And you're in there for a minute, you ask your</p> <p>11 question, Mr. Vennewitz says of course you're keeping the</p> <p>12 door open, that's what John Luke wants, you close the</p> <p>13 door and go away?</p> <p>14 A. I don't even close it. It has those -- not</p> <p>15 automatic but little arms if you let go of it it will</p> <p>16 shut it. And I just let go of the door and I walked</p> <p>17 away, yes.</p> <p>18 Q. Did you see anyone else that evening?</p> <p>19 A. You know, I know I saw Kim like out of the</p> <p>20 corner of my eye straight ahead so like on the other side</p> <p>21 of the boardroom table in the center of the room toward</p> <p>22 the back, I saw her standing back there. But I saw</p> <p>23 people earlier in the night and I saw some of them come</p> <p>24 down.</p> <p>25 Q. So in the room -- let's go through this again.</p>

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<p style="text-align: right;">150</p> <p>1 A. Okay.</p> <p>2 Q. You've got David Bullerman and Patti center</p> <p>3 right in front of the door.</p> <p>4 A. Yes.</p> <p>5 Q. And on the left you have this group of people,</p> <p>6 backs to you, sitting, standing, drinks in their hands?</p> <p>7 A. Yes.</p> <p>8 Q. And you see Dale Nelson and the blond on the</p> <p>9 table, and then you see Kim further back on --</p> <p>10 A. I saw Kim further back, and I could see Victor</p> <p>11 standing in the group on the left near the back wall too.</p> <p>12 Q. So on the left with the group of people with</p> <p>13 their backs to you you can see Victor --</p> <p>14 A. Victor, yes.</p> <p>15 Q. Anything else about the room?</p> <p>16 A. It's -- well, I see lots and lots of drinks and</p> <p>17 bottles and glasses and, you know, wine bottles, alcohol</p> <p>18 bottles, beer bottles. Everyone was laughing and having</p> <p>19 fun when I opened the door.</p> <p>20 And then when I did they went "oohhh." A lot of</p> <p>21 people made that sound, like of a general consensus in</p> <p>22 the room, like -- I don't know why but that's -- I would</p> <p>23 imagine it's like ooh, we're busted, because that's what</p> <p>24 it felt like to me, when you walk in on your kids.</p> <p>25 Q. Do you know why they were in there?</p>	<p style="text-align: right;">152</p> <p>1 Q. Okay. So she tells you that, you know, John</p> <p>2 Luke thanked everybody, they had a champagne toast.</p> <p>3 A. And then said, "But he didn't call me up because</p> <p>4 he made a mistake," you know, he had omitted her</p> <p>5 accidentally. She said, "And he forgot me," like that.</p> <p>6 Q. Anything else she tells you?</p> <p>7 A. No.</p> <p>8 Q. And then Sunny came down?</p> <p>9 A. Sunny came down before Heather. And Sunny was</p> <p>10 leaving because Sunny doesn't drive. Her husband was</p> <p>11 getting her and she said the same thing, it was very</p> <p>12 nice, John Luke thanked us all and we had a glass of</p> <p>13 champagne and called us up on the stage. That was very</p> <p>14 nice.</p> <p>15 Q. What had Sunny done for the conference?</p> <p>16 A. Well, Sunny was the assistant in-room dining</p> <p>17 manager at the time, so Sunny had worked just as hard as,</p> <p>18 you know, Heather or anybody. And Gretchen at the time</p> <p>19 was a captain. She was a captain then.</p> <p>20 Sunny, you know, when you build amenities for,</p> <p>21 you know, 600 rooms or something it takes a long time.</p> <p>22 So they'd sit with these big queen carts and bus tubs and</p> <p>23 you have to put waters and whatever you need in each</p> <p>24 room. You have to build this thing up and haul it. You</p> <p>25 have to orchestrate all the rooms and room keys.</p>
<p style="text-align: right;">151</p> <p>1 A. No. It appeared to me that they were having a</p> <p>2 party.</p> <p>3 Q. Did you know that they were celebrating</p> <p>4 finishing the DOS conference?</p> <p>5 A. I knew that they had done that earlier in the</p> <p>6 evening when they brought people up on stage and John</p> <p>7 Luke had congratulated everybody and they all had a</p> <p>8 champagne toast. I know that happened.</p> <p>9 Q. How did you know that happened?</p> <p>10 A. Because when Heather came downstairs at one</p> <p>11 point, she told me that. And Sunny came down to leave</p> <p>12 and told me the same thing, said that they had toasted</p> <p>13 and it was nice that John Luke had toasted everybody and</p> <p>14 individually thanked everybody and they all had a glass</p> <p>15 of champagne.</p> <p>16 Q. Okay. Did you feel left out?</p> <p>17 A. No. No, not really, because I didn't do all</p> <p>18 they had done. And I was doing what I was asked to do,</p> <p>19 so no.</p> <p>20 Q. So when did Heather come down?</p> <p>21 A. She came down to grab something out of her</p> <p>22 office. Maybe it was her bag or something. And I'm</p> <p>23 trying to remember what time it was. Maybe 11:00, 10:30.</p> <p>24 It was pretty early in the evening. It was probably</p> <p>25 11:00, though.</p>	<p style="text-align: right;">153</p> <p>1 Q. But didn't you do that?</p> <p>2 A. Yeah, I brought it up. I helped but it wasn't</p> <p>3 like it was my master plan. I just did what Heather --</p> <p>4 Heather gave me a piece of paper and pass keys. I helped</p> <p>5 build some of the amenities prior to the conference</p> <p>6 arriving.</p> <p>7 Q. Okay. So you left the door closed to Boardroom</p> <p>8 1, and what happens next? You go down the escalators?</p> <p>9 A. Yeah. I walk away. Escalators are to my left,</p> <p>10 I walk over there, go down the escalator, and straight</p> <p>11 into the lounge because once you go down the escalator</p> <p>12 you're on the main floor. Lounge would be to your right.</p> <p>13 I go straight to the lounge and say hey, we're not</p> <p>14 closing.</p> <p>15 Q. You just said the escalators were to your left.</p> <p>16 A. That would be upstairs. I was at a boardroom</p> <p>17 here. The escalator would be here. I turn around, I</p> <p>18 walk back to the escalator, come down. When I get off on</p> <p>19 the lowest level, the lounge is on the right.</p> <p>20 Upstairs has a line of boardrooms along -- I</p> <p>21 don't know north or south so I can't tell you that, but</p> <p>22 facing Marquette Avenue. And then the other side would</p> <p>23 be where the ballrooms are. And then down the middle is</p> <p>24 a giant hallway, and escalators are kind of at the end of</p> <p>25 that floor.</p>

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<p>1 Q. Now, how was the boardroom set up?</p> <p>2 A. Table and -- I see the table. I'm sure normally</p> <p>3 had chairs by it but the chairs were all over because I</p> <p>4 think people were sitting in them, so I didn't see any</p> <p>5 chairs on the one side facing the door. And I could just</p> <p>6 see the table had tons and tons of glasses and wine and</p> <p>7 bottles and booze.</p> <p>8 Q. Well, you've seen the boardroom set up in</p> <p>9 various different ways, right?</p> <p>10 A. Yes, but it's a stationary table like the one</p> <p>11 we're sitting at today. So it's not like you can break</p> <p>12 it apart. It's one big table.</p> <p>13 Q. Well, you can make it into a U-shape.</p> <p>14 A. They could, but it wasn't set up that way. It</p> <p>15 was set up with a table down the center of the room.</p> <p>16 Q. Were people smoking in the room?</p> <p>17 A. I don't think so, no. I didn't smell anything,</p> <p>18 so no.</p> <p>19 Q. Did you talk to anyone else who had been in the</p> <p>20 boardroom that night prior to when you arrived at it at</p> <p>21 about 12:40, 12:45?</p> <p>22 A. I arrived there I know around 12:50. And I</p> <p>23 never talked to anybody who had been in that room prior</p> <p>24 to going to that room.</p> <p>25 Q. Well, besides Heather and Sunny?</p>	<p>1 looked like it may have been, you know. I couldn't see</p> <p>2 his back. But from him hunched over it looked as though</p> <p>3 the back part was still in his pants.</p> <p>4 Q. Did he have a belt on?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Where were her hands?</p> <p>7 A. Just lying on the table.</p> <p>8 Q. And where were his hands?</p> <p>9 A. Around her, like around her neck and back, it</p> <p>10 looked like.</p> <p>11 Q. Okay. So he was on her from his chin down to</p> <p>12 his groin, and his hands were behind her neck and her</p> <p>13 back?</p> <p>14 A. Yeah, like tucked behind her, as if you were</p> <p>15 embracing someone while they're lying down.</p> <p>16 Q. Anything else you remember about those two?</p> <p>17 A. Not that I haven't already told you.</p> <p>18 Q. Now, you let the door close and you walked</p> <p>19 downstairs back down to the lounge?</p> <p>20 A. Correct.</p> <p>21 Q. And took the escalators down?</p> <p>22 A. Yes.</p> <p>23 Q. Did you talk to anyone -- so you told them that</p> <p>24 the bar was staying open?</p> <p>25 A. So I had to walk into the lounge and now I'm</p>
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<p>1 A. Correct. But I didn't -- I don't think they</p> <p>2 were in that room. They were in a party. That's what</p> <p>3 they were talking about. That's where the stage was</p> <p>4 in that party with the Prince band.</p> <p>5 I didn't even know that -- I mean, nobody said</p> <p>6 anything about that room. I didn't know that room</p> <p>7 existed, you know what I mean? I didn't know there were</p> <p>8 people in that room. I knew the room existed.</p> <p>9 So when they said that, that's exactly -- the</p> <p>10 stage was in the ballroom so that's what I thought they</p> <p>11 meant when they said up on the stage.</p> <p>12 Q. No one propositioned you in the room, did they?</p> <p>13 A. No.</p> <p>14 Q. And you were in the room for less than a minute?</p> <p>15 A. About a minute I'd say, yeah.</p> <p>16 MS. BISCHOFF: Okay. Let's take a quick</p> <p>17 break.</p> <p>18 (Recess taken between 1:32 p.m. and 1:48 p.m.)</p> <p>19 Q. (By Ms. Bischoff) Going back to Dale Nelson and</p> <p>20 the blond, how tall was the table they were laying on?</p> <p>21 A. I think it was this height. About this height.</p> <p>22 Q. General office table height?</p> <p>23 A. Yes.</p> <p>24 Q. And was his shirt tucked in?</p> <p>25 A. I don't know. I couldn't -- from the back it</p>	<p>1 going to inform the staff, so Dawn was bartending. I</p> <p>2 went right up by Dawn. She was working. I think Emma</p> <p>3 was working. I know Kristin was working. It was one</p> <p>4 other person but I don't remember who it was now.</p> <p>5 At any rate, I said to Dawn, to Emma, we're</p> <p>6 keeping the bar open, we're re-opening, so re-open right</p> <p>7 now because I think they're going to come down. Just</p> <p>8 re-open.</p> <p>9 Well, but -- and they started doing the whole</p> <p>10 we've been closed, and then I must have had some strange</p> <p>11 look on my face because Dawn said what went on up there.</p> <p>12 Q. What did you say?</p> <p>13 A. Nothing. I'm not talking about that. Don't</p> <p>14 worry about that. We're keeping the bar open.</p> <p>15 Q. What's Dawn's last name?</p> <p>16 A. I don't remember.</p> <p>17 Q. What's Emma's last name?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. So the bar opens.</p> <p>20 A. Yeah. Not really officially. There's no gates</p> <p>21 or anything. They were just cleaning up and starting to</p> <p>22 do things. Emma hadn't even started her financials or</p> <p>23 anything. What she was doing was blowing out candles</p> <p>24 that were on tables and such. And Dawn was just wiping</p> <p>25 down bottles and the normal procedures that would take</p>

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